



The criminalisation of children living in out-of-home care in Queensland

Queensland
Family & Child
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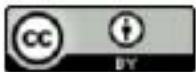
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Introduction

Children and young people have reported they feel unnecessarily exposed to police while living in out-of-home care, particularly while living in residential care. The issue of criminalisation of children living in out-of-home care and their overrepresentation in the criminal justice system is a concern for the immediate and longer-term outcomes for many aspects of a child's life.

Criminalisation refers to the normalisation of responses from child protection and criminal justice systems, resulting in a child being exposed unnecessarily to the criminal justice system. This includes stigmatising children, labelling their behaviours as criminal, and adopting a criminal response to actions that would not be treated as criminal in a family home.

Children living in out-of-home and residential care often have complex needs resulting from abuse or neglect including exposure to substance abuse or domestic and family violence. The impact of these experiences may manifest in an inability to regulate behaviours or difficulties with interpersonal skills. These children, as with all children, can rightfully expect to be cared for within a trauma-responsive system that does not unnecessarily criminalise behaviours that result from trauma.

This paper explores the issue of criminalisation of children living in out-of-home care, the main factors reported to contribute to their criminalisation and jurisdictional responses to address the issue.

Criminalisation should not be interpreted as the action of a young person, rather, we are discussing child protection systems' reliance on responses that involve the police.

Section One: Criminalisation of children living in out-of-home care

There is a well-established nexus between children's involvement with child protection services, their overrepresentation in the youth justice system and their likelihood of contact with the criminal justice system as an adult.

While research perspectives and findings vary in relation to the rate of overrepresentation, the research is useful in providing a broad understanding of the issues related to the criminalisation of children living in out-of-home care.

National overview

The criminalisation of children living in out-of-home care, and their overrepresentation in the youth justice system have been identified as a concern across Australia.

In 2014–15, the Australian Institute of Health and Welfare (AIHW) found that across five Australian jurisdictions, children in the child protection system were 14 times more likely than the general population to be under youth justice supervision.¹

Two in every five (40.8%) children in detention had also been involved in the child protection system.² This means they were 19 times as likely to be in the child protection system compared to the general population.

Overall, males with a child protection history are more than twice as likely as females to have had contact with the criminal justice system.³

40.8% of children in youth detention had also been involved in the child protection system.

This means they were **19 times** as likely to be in the child protection system compared to the general population.

Australian Institute of Health and Welfare, 2016

State samples

In Queensland, Department of Justice and Attorney-General (DJAG) data from February 2014 shows that 76% of children known to the Queensland youth justice system were also known to Child Safety Servicesⁱ.⁴ Similarly, in 2015-16, 32% of children in youth detention in Queensland had a child protection order history.⁵

In New South Wales, the 2008 Special Commission of Inquiry into Child Protection Services in New South Wales reported that 28% of males and 39% of females in youth detention had lived in out-of-home care. Further, 21% of males and 36% of females who were subject to a community order had a history of out-of-home care placements.⁶

In Victoria, a 2007 study found that 21% of children over the age of 10 living in out-of-home care had been cautioned or warned by the police, or charged with a criminal offence within the six months prior to the study.⁷

Similarly in 2014, Victoria Legal Aid (VLA) investigated how many children living in out-of-home care had sought assistance for a criminal charge. This analysis found children living in out-of-home care were almost twice as likely as children living with their family to become involved in the criminal justice system (30% vs 18%).⁸ Of concern was that 83% of children living in out-of-home care charged with a criminal offence had

ⁱ Child Safety Services is the generic representation of the department with responsibility for the delivery of tertiary child protection in Queensland.

been charged within the first 12 months of their placement. For these children the most common charge was criminal damage, whereas the most common charge for other children was theft.⁹

A South Australian study found a large proportion (71.1%) of young offenders had child protection histories.¹⁰ This study also found that children living in out-of-home care were more likely to have a conviction than those who did not have an out-of-home care placement history.¹¹

Still, the majority of children living in out-of-home care *will not* be known to or under the formal supervision of youth justice.

The criminalisation of children in out-of-home care is not unique to Australia.
In England, children who have lived in of out-of-home care are more
likely to have contact with the criminal justice system.
Offending rates for children in out-of-home care in England were
counted as four times those of children not in care.

Shaw, 2016

Aboriginal and Torres Strait Islander children

Aboriginal and Torres Strait Islander children are known to be disproportionately represented within both the child protection and criminal justice systems in all states and territories. In Queensland in 2016, Aboriginal and Torres Strait Islander children were 8.5 times more likely to be placed in out-of-home care. In 2014-15, Aboriginal and Torres Strait Islander children in Queensland were 18.2 times more likely to be in youth detention than their non-Indigenous peers.¹²

Intergenerational trauma and the legacy of colonisation continues to underpin this overrepresentation. The complexity of these experiences, past and present, must be considered as part of a culturally appropriate approach to providing trauma-responsive care and support to Aboriginal and Torres Strait Islander children living in out-of-home-care.

Culture plays an important role in how children manage and express their traumatic life experiences, protect against the risk of continued trauma and identify supports and interventions that are effective.¹³ Aboriginal and Torres Strait Islander children must be supported to maintain connections with community, culture and family.

An important part of delivering trauma-responsive care and support to Aboriginal and Torres Strait Islander children includes developing culturally competent staff and adopting practices that acknowledge and are respectful of Aboriginal and Torres Strait Islander cultures.¹⁴ Providing residential care workers with information about behavioural, social or psychological responses to trauma from a cultural perspective strengthens support for Aboriginal and Torres Strait Islander children. It also promotes the importance of connecting with culturally responsive services.

Impacts on children in out-of-home care having contact with the criminal justice system

There are wide ranging negative effects for children who have contact with the criminal justice system.

A recent study, investigating the relationship between the child protection and criminal justice systems in New South Wales, found that children living in out-of-home care are more likely than those not in care to be charged following their first contact with police, and be charged for relatively minor offences. In most of these cases, it was determined that a police caution would have been a more appropriate response.¹⁵



... children who enter care having experienced abuse trauma ...
are then particularly vulnerable to being negatively influenced
by relationships and experiences within care.
This impact of this interaction is then exacerbated by involvement in the
youth justice system itself which can further criminalise looked after
children [children living in out-of-home care].

Staines, 2017



Living in out-of-home care has been shown to lead to an increased risk of negative behavioural outcomes in children.¹⁶ This is particularly the case for those who have also been involved with the youth justice system.¹⁷ Early contact with the criminal justice system can result in increasingly punitive criminal justice responses in the future as well as increase the child's risk of becoming involved as an adult.¹⁸

Additionally, children who are living in out-of-home care often receive harsher treatment when they come in contact with the criminal justice system compared to children not living in out-of-home care, for example, they are more likely to be refused bail.¹⁹ While there may be a variety of reasons to refuse bail, refusal can be linked to a lack of appropriate accommodation within the community.

Contact with both the child protection and the criminal justice systems can have significant and long-term negative effects in other aspects of a child's life, throughout childhood and into the future.

Children who have been known to both child protection and youth justice have a greater likelihood of experiencing poorer life outcomes, such as poor mental and physical health, and increased difficulties in accessing education, employment and housing.²⁰ Children who have been subject to a youth justice order are also more likely to experience negative health and socio-economic life outcomes.²¹

The unnecessary involvement of police and the criminal justice system has broader impacts for the community more generally. For example, the reliance on involving police as a behaviour response in residential care services takes police resources away from responding to other incidents within the community.

Section Two: Criminalisation of children living in residential care

Children placed within residential care services often have complex needs resulting from trauma and/or abuse and neglect, which may include exposure to substance abuse or domestic and family violence. These experiences can often manifest in an inability to regulate behaviours, or difficulties with interpersonal skills. Accordingly, the care provided within a residential care service setting should be trauma-responsive and therapeutic in nature.

The complex history of children living in residential care means they are more likely to have contact with police or have a criminal record than those in other types of care.²² This does not mean that all children living in residential care are destined to act out criminally, but rather that the systems designed to protect them are more likely to expose the child to criminalisation.

For example, the high numbers of police call-outs by residential care services means children living in residential care are more likely to be cautioned or charged by police than other children. This discernibly contributes to their unnecessary exposure to the youth justice system.²³



... some children in care remain at far greater risk of being drawn into the criminal justice system and getting a criminal record for minor offences that would never come to official attention if they were living at home with their parents.

Fitzpatrick and Williams, 2017²⁴



In Victoria in 2007, children aged 10 years and over living in residential care were nine times more likely to have been cautioned or warned by the police, or charged with a criminal offence than children in other types of care.²⁵ This can be seen as an example of children living in residential care receiving responses to challenging behaviour that results in an escalation to involve police, more so than children in other types of (home-based) care.

A recent study investigated the relationship between the New South Wales child protection and criminal justice systems by reviewing select files of children living in out-of-home care who had appeared before the New South Wales Children's Court. Of the court files reviewed, almost half (46%) of children were living in a residential placement at the time of the offence that brought them before the Court.²⁶ This is despite children living in residential care making up only a small proportion of all children living in out-of-home care in New South Wales. For the young people in this study, bail conditions were also more heavily policed than those living in foster or kinship care.²⁷

The preventable exposure of children living in residential care to the criminal justice system has been attributed to several factors including:

- the instability of residential care placements compared with other types of out-of-home care
- police being called to respond to minor incidents, including as a response to challenging behaviours
- residential care services' tendency to view police custody and youth detention as 'respite'
- police being called to locate 'absent' children.²⁸

A child's exposure to the criminal justice system can come through many pathways, however, contact with the police is usually the first point of exposure. Reducing preventable police call-outs to residential care services is a current focus in Queensland.

Young people's perspectives on police-call outs to residential care services in Queensland

In 2012, the CREATE Foundation (CREATE) GForce working group identified the need to address the criminalisation of children living in residential care services. Young people with lived experience in out-of-home care had expressed that workers in residential care services often called the police to manage situations that may not have come to police attention in a foster or kinship care, family home environment.

CREATE relayed that the young people reported:

- it was not uncommon for police to attend residential care services
- children in residential care did not know enough about their rights, or the law and felt ill-equipped in dealing with the police
- 'residential workers [did not] act with the same degree of compassion and often resorted to calling in support from the police instead of handling ... behaviour as a family would'
- 'life in residential care is very different to life in foster care [in respect to exposure to the police]'.²⁹

In October and November 2017, the Queensland Family and Child Commission (QFCC) spoke with young people about their experiences of residential care, including police contact (refer to the *Young people's perspectives of residential care, including police call-outs* information paper). The majority stated that when they lived in residential care police were called unnecessarily in certain situations. Their perspectives included:

- 'Part of the reason I was in trouble with police was all the missing children reports. [The police] would see me and pull me over.'
- '[I was charged with] common assault – got thrown in the watch house. [I threw a skateboard] and the same worker who I threw the skateboard at came to pick me up – doesn't make sense.'
- '[The police] charged me for property damage in regards to pushing a stool over – there was a scratch on the floor.'
- 'I've been charged with wilful damage and breaking and entering. I broke into the [residential service] to get my own stuff. I told them what time I was going to be there. People should have been there at that time but they weren't.'

A child's history must be considered when deciding how to manage behaviour, rather than decisions being based on the type of incident they may be involved in.³⁰ Some young people reported *any* police contact affected their feeling of security and stability in residential care, reminding them of bad experiences and triggering difficult emotions.³¹ Furthermore, young people have said that police involvement in an incident at a residential care service can stigmatise them and have an immediate negative effect on other children living in the placement.³²

While police intervention is warranted in some circumstances, involving police as a way of keeping order in a residential care service has a number of unintended consequences to children. This practice presumes children living in residential care are potential criminals and increases their contact with the criminal justice system where they otherwise would have had none.³³ This can lead to the perception children living in, or who have previously lived in, residential care are a 'risky' group.



I tell them I am in resi care and they think I am a bad child.
[People think] resi is for the insane or misbehaved.

Young person, QFCC workshops 2017



The absence of support for children during and after police involvement and throughout resulting court proceedings is also reported to be an issue. A 2017 study in New South Wales found a lack of agency involvement with vulnerable children when they were exposed to the criminal justice system. For example, in over a third of cases reviewed, there was no evidence of children living in out-of-home care being provided with appropriate support at the police station or at court.³⁴

CREATE reported on this issue from a young person's perspective stating that often 'nobody is talking to them about rights'.³⁵ It was also suggested that knowledge of rights and the law was part of a power imbalance between youth workers and young people. In addition to being in opposition to the *Charter of rights for children in care* and the principles of the *Youth Justice Act 1992*, this lack of support means children living in out-of-home care can be further disadvantaged by the systems designed to protect them.

'[Children living in residential care] are not told of **their rights** and they have had enough of the rules in their lives changed because they live in care.
It isn't fair to set them up to fail.'

Young person, CREATE Survey, 2012

Children living in residential care have further reported they are not provided with adequate support throughout their contact with the criminal justice system. This includes being supported to access legal representation or to seek information on the law and their rights. Without the proper support and information, children will be disadvantaged during their contact with the criminal justice system.



They stood there but didn't participate in it because the young person is the one who got themselves into the situation, therefore they have to deal with it.

Young person, CREATE Survey, 2012



There is an opportunity to better respond to the support needs of children living in residential care to avoid unnecessary criminalisation. This response includes developing a better understanding of the workforce, policies and practices that are driving the high rate of police call-outs in residential care services.

Section Three: Factors contributing to the preventable exposure of children living in residential care to the criminal justice system

The experiences and vulnerability of children living in residential care together with the characteristics of the residential care system contributes to a child's risk of exposure to the criminal justice system.

There are a number of factors that contribute to residential care services contacting the police including:

- characteristics of residential care services and the workforce
- placement matching, care environments and stability for children living in residential care services
- responses to children living in residential care who are absent from placement.

Policies and procedures

Child Safety Services funds, licenses and regulates the residential care system. Licensed non-government organisations are responsible for managing the operation of residential care services. Under this arrangement, the licensed organisations develop self-governing operational policies and procedures to manage the safety and wellbeing of children, in line with the licensing requirements stipulated by Child Safety Services.³⁶

There is inconsistency in the policies adopted by different licensed organisations, and this has resulted in inconsistent guidelines around calling the police to respond to incidents at individual residential care services. There is also inconsistency in procedures that guide de-escalation of behaviours and responses when children are absent from placements. A lack of guidance for managing and responding to incidents in residential care services has led to an over-reliance on criminal justice responses, such as police call-outs.³⁷

‘... not all the residential services in Queensland are the same and therefore cannot all be assumed to be **delivering services** to young people in the same way. There are significant variations in funding levels, **service agreements**, program designs, resources, local support services ... and the young people being referred to them.’

CREATE Survey, 2012

The Queensland Child Protection Commission of Inquiry (QCPCI) found that children living in residential care were being charged with criminal offences because residential care workers were making formal complaints about their behaviour. In their inquiry the QCPCI identified the decision to call police can be related to risk adverse policies of residential care services. The final decision to call police was left to the discretion of the individual residential care worker.³⁸

Below is an example of a minor incident in a residential care service in Queensland. In this instance, police should not have been relied upon to respond to the incident.

Minor incident resulting in police involvement

The police charged a 15 year old living in a residential care service with stealing the key to their bedroom. The child was from a refugee background and had been diagnosed with post-traumatic stress syndrome.

The residential care service provided the child with a key to their room in the residential care service. However, the child lost the key. They borrowed the residential care worker's key to their room. The child left the residential service for a period of hours keeping the key with them. Subsequently, the residential care worker made a complaint to the police.

The child's lawyer made a written submission to Police Prosecutions on the basis there was no intent on the part of the child to keep the key permanently. The police accepted the submission and discontinued the prosecution. The matter took over two months to finalise and during that time the child was subject to continuing bail conditions.³⁹

Policies and procedures that promote consistency and local resolution, and make sure police involvement is limited to situations where needed, will reduce the criminalisation of children living in out-of-home care.

Staff capability

The residential care environment has been described as a process of 'care criminalisation', in which staff are inadequately trained to resolve conflict and so rely on police to manage children's behaviours.⁴⁰

'The level of experience and service support impacts on an individual worker's capacity to deal with challenging and complex behaviours.'

Queensland residential care worker, G-Force Survey

The perspectives of residential care workers, as captured by CREATE, indicate concerns about the frequency and impact of police involvement at residential care services:



My opinion after 5 years, watching 30–40 different youth workers' approaches, [is] that most workers who press charges do so out of a sense of helplessness, they are not confident in their own ability to manage the situation (due to lack of training, experience [or] individual resilience).

Most staff are confident to manage intense situation/crisis [and] are able to utilise the opportunity to build rapport and teach more suitable coping strategies resulting in subtle improvements in behaviour. The challenge is identifying where "the line" should be drawn with violent behaviour.

Queensland residential care worker, G-Force Survey



It is important that staff have the capability to respond therapeutically in ways that do not unnecessarily criminalise a child's behaviour. One study into residential care services in England found that staff in residential services view calling the police as a 'much-needed way of keeping order'.⁴¹ This way of thinking can result in an increased tendency to use the criminal justice system to resolve problematic situations.⁴²

Indeed, this English study determined residential care workers often called police to assist with challenging behaviours and considered police involvement a 'wake-up call' for children living in residential care.⁴³ This has also been found in Australian research, where the criminal justice system is seen as a recourse for a child considered out of control or failing to respond to other sanctions given by staff.⁴⁴

A further recent report by the Commission for Children and Young People in Victoria notes, ‘reliance on police may indicate that some staff are not adequately equipped or supported to respond to trauma related behaviours of vulnerable children.’⁴⁵ The views of children and young people also support this.

Children living in residential care recognise the importance of a capable and supported workforce that has the capacity to meet the needs of the children under their care. They have identified that in order to feel safe in a residential care service, the residential staff need to be well trained and have the capacity to act to prevent problems and skilfully respond when issues arise.⁴⁶

Young people’s perspectives on residential care workers

CREATE interviewed children who are living in, and young people who have previously lived in residential care about what they thought were the strengths and weaknesses of residential care workers. One young person reported communication and trust provide the opportunity to explore a young person’s behavioural triggers and eliminate the need to call police. Improving communication in residential care services can create trust and respect between children and staff.

The below diagram illustrates children’s perspectives on qualities that make a good and a not-so-good residential care worker.



Figure 1: Children’s perspectives on qualities that make a good and a not-so-good residential care worker

Children living in out-of-home care may have a history of trauma, such as mental illness, domestic and family violence exposure, physical abuse or neglect, or family members with substance abuse problems.⁴⁷ These experiences can influence cognitive and social development, including a child's ability to regulate physical, emotional and behavioural responses.⁴⁸ This highlights the need for staff to be able to address the behaviour support needs of children in ways that do not unnecessarily treat behaviours as criminal.

An opportunity exists to challenge the reliance on criminal justice responses. Strengthening the capability of workers in residential care services to apply a trauma-responsive approach to meet the individual needs of children will contribute to the reduction of criminalisation of children living in residential care. Since the release of the QCPCI report, Child Safety Services commissioned PeakCare to develop the *Hope and Healing Framework for Residential Care* (Hope and Healing Framework). The Hope and Healing Framework will see the broad adoption and implementation of a trauma-informed therapeutic framework for all residential care services in Queensland.

Minimum qualifications for residential care workers

In May 2017, the former Minister for Child Safety announced that from July 2018, all residential and non-family based care workers must be working towards a minimum Certificate IV in a relevant child and welfare or child wellbeing course.

All workers must hold a Certificate IV or higher by the end of 2019. This aims to strengthen the capability and capacity of the workforce in delivering services to vulnerable children.

The care environment

Co-location of children in residential care potentially raises exposure to behaviour and attitudes (for example, substance use and educational disengagement) which can increase the likelihood of offending behaviour to occur.⁴⁹ Although recognised as not ideal, it is not uncommon for children with higher behaviour support needs to be living together in the same residential care service.⁵⁰

This means it is important to consider the dynamics of the household when planning for the individual needs of each child. This includes maintaining a view of each child's individual strengths, pressures and triggers as well as considering the impacts of the dynamics of all children living together and the residential care environment.⁵¹



**My foster parents were more strict, but also more lenient.
Foster parents have more time to understand what is going on.
I don't think resi unit staff really give young people a chance to say what
is going on, this is what's happening.**

Young person, CREATE Survey, 2012



Young people list having a sense of 'comfort and normality' as something they want and need from residential care.⁵² However, research shows children living in residential care are typically subject to higher levels of surveillance by their caregivers than children living at home or in other types of out-of-home care.⁵³ Furthermore, young people in Queensland who have experienced both family-based and residential care said they were not treated with the same degree of compassion in residential care, and that workers resorted to calling the police more often than foster or kinship carers.⁵⁴ This may make it difficult for children to achieve a sense of comfort and normality in the residential care home.

Young people also list 'feeling safe and supported' as something they want and need from residential care. While all research indicates the importance of maintaining a safe and non-violent environment for children to feel safe and learn new responses to stressful situations⁵⁵, some strategies to increase safety may have unintended consequences or be interpreted as a means of imposing compliance and control. Two young adults told the QFCC, 'at one house you were searched before you entered the house, every time you came home. This house was where lots of incidents had occurred', and 'there was bars on windows. It felt like a jail.'

Children who are absent from their placement

Child Safety Services currently provides support and guidance to foster and kinship carers and staff in residential care services to respond to situations where a child is assumed missing.

Reporting missing children

A **missing child** is any child whose location is unknown and there are fears for the safety or concern for the welfare of that child.

An **absent child** is a child who is absent for a short period without permission, and where the child's location is known or can be quickly established.⁵⁶

When a child is missing, immediate efforts are required to locate them. This includes reporting the child as missing to the police.

However, in circumstances where children aren't missing but rather are 'absent from placement' (the child is not where they are meant to be, but their whereabouts are known or can be easily confirmed) carers and residential staff are directed to act as a 'reasonable parent' would when determining how to respond.⁵⁷ In these circumstances in Queensland, the Queensland Police Service (QPS) does not expect to receive a missing persons report.⁵⁸

Evidence suggests children who are absent from their residential care service are often unnecessarily being reported as missing.⁵⁹ This concern was raised during the Queensland Child Protection Commission of Inquiry (QCPCI) where the QPS identified the high numbers of calls, primarily from residential care services, for children 'missing' from out-of-home care.

In 2016, the QFCC conducted a **review of the arrangements** in place for responding to children missing or absent from out-of-home care.

This report found children living in out-of-home care may account for up to **30%** of all children reported missing to the QPS.

The evidence provided to the QCPCI indicated missing person reports were often made with little or no prior investigation by staff into the absent child's location. In many of these instances, the absent child did not fit the definition of a missing person, as their general whereabouts was known to staff or could easily be determined. The QPS expressed that reporting a child as missing in these circumstances 'trivialised' the intended purpose of missing person reports.

Residential care services calling police in response to a child's absence has been seen as a 'symptom of a residential system under strain'.⁶⁰ The former Queensland Commission for Children and Young People and Child Guardian told the QCPCI that young people did not perceive residential care services to be safe or that 'staff are acting in a supporting or sensitive manner' to their behaviour support needs.⁶¹ As a result, the QCPCI raised concerns regarding the residential care system using a service model that does not reflect an understanding of the effect of past traumatic experiences, insecure attachment relationships and developmental needs on a child's psychological wellbeing.

The Hope and Healing Framework is one initiative being embedded to address these concerns by strengthening trauma-informed responses through establishing a therapeutic framework for all residential care services.

Placement matching and placement stability

The child protection sector also needs to consider ways to increase stability within residential care placements. There are concerns with policies and practices that result in children living in out-of-home care being exposed to multiple case workers, variations in expectations around behaviours, and disconnection from peers and support systems. These issues create an environment of instability and lack of consistency in supporting behaviour regulation and cultural norms. Placement instability has been linked to contact with the criminal justice system.⁶²

In 2012, children and young people reported experiencing a minimum of four placements prior to living in residential care. The average number of placements in residential care for children who spoke to CREATE was 7.9.⁶³

Impacts of placement instability

Children are often placed in a residential care service when other placements no longer meet their needs.⁶⁴ Children living in residential care report feeling most safe when there is stability and predictability in the environment and they have argued that more attention needs to be given when deciding which children are placed together in residential care services.⁶⁵



Participants believed that children [living in residential care services] ... were unsafe because of poor decisions about who they were placed with, and wanted more say in how they were matched with their peers.

Moore, McArthur, Roche, Death and Tilbury, 2014



One young person told the QFCC, ‘kids already knew my reputation, kids knew how to get to me. I was taken to this house and I said to the carers if you leave me here someone is going to get hurt and it’s not going to be me. I warned them. And as soon as the worker left we had a punch on. I told the workers face-to-face “this has already happened today”.’

Residential care services should create a positive peer culture where young people support each other. It is important the placement matching process considers the individual service, the dynamics of children already living within the placement and the needs of the individual child when determining if the residential care placement is appropriate.

Poor placement matching can contribute to the criminalisation of children living in residential care services.⁶⁶ Placing children with high-risk peers in residential care can have a negative effect on their behaviours, including shaping or encouraging deviant and offending behaviours.⁶⁷ One young person said ‘some of the houses out there are real bad. It’s not your intention to get involved with it [trouble] but you want to have a bond with the people you live with. [They are sometimes] two or three years older [than you are].’

Placement instability can also negatively affect education outcomes and employment opportunities for children. Children living in residential care services are less likely to be engaged in school or training and are more likely to be unemployed or in low paid employment⁶⁸ increasing their risk of exposure to the criminal justice system.

Section Four: Improving responses through a joint agency response

An opportunity exists to improve policies, processes, connections and support to reduce preventable involvement of police with residential care services in Queensland.

Part of this response should include developing meaningful collaboration across agencies and services.



There are risks to young people and youth workers alike with the existing model of developing and delivering residential care placements in Queensland, and yet there is so much potential for well-designed residential care facilities to provide a safe and supportive learning environment where young people can develop the skills they need for their future.

Continuous improvement informed by the participation of children and young people in care will help this potential to be realised.

CREATE Survey 2012



Research has identified a number of effective strategies to support children in residential care services at risk of exposure to the criminal justice system. These strategies include:

- establishing a positive relationship between police, staff and children living in residential care services
- making sure residential care workers have been trained in restorative approaches to responding to incidents of problematic behaviour in residential care services
- the expectation that residential care workers are willing and able to accept new strategies to respond to incidents of problematic behaviour.⁶⁹

These strategies have been operationally developed and implemented in other Australian jurisdictions. For example, the New South Wales government has recently introduced a protocol to ‘reduce the frequency of police involvement in responding to behaviour by young people living in residential OOHC [out-of-home care] services that would be better managed within the service’.⁷⁰

This *Joint Protocol to Reduce the Contact of Young People in Residential Out-of-home Care with the Criminal Justice System* (the Protocol) aims to facilitate collaboration between police and residential services to provide a coordinated and trauma-informed approach. The Protocol provides guidance to residential care workers and the police about how to best respond to children in residential care’s behaviour in a manner that is consistent with therapeutic care.

Joint protocols focusing on restorative justice programs in residential care services and interagency collaboration have also been implemented internationally, particularly in the United Kingdom.

For example, the Staffordshire County Council and Stoke-on-Trent City Council, England, introduced *A Joint Protocol to Reduce the Prosecution of Looked After Children* in 2017. This protocol highlights the importance of regular and effective liaison between residential care staff and managers, social workers, Staffordshire and Stoke-on-Trent Youth Offending Service staff, local police and youth specialist prosecutors.

Protocols have been developed in those jurisdictions to provide consistent standards and guidance for residential care services and others involved in providing care for children.

Support and communication

Research commissioned by the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) highlighted that young people often seek avenues to discuss safety in residential care services, however, they are rarely given opportunities to contribute to the discussion about how best to respond to issues.⁷¹ Moore and colleagues found that ‘residential care units were safer when they had clearly articulated expectations of staff and children and demonstrated their commitment to safety by doing what they said they would do’.⁷²



Adults always have a choice about how they respond to very... troublesome behaviour from young people... developing a better understanding and more appropriate response to children’s behaviour in residential care is a starting point.

Hayden, 2010



Residential care services in Queensland have identified that displaying policies and practices visually (such as through posters) communicates expectations clearly to children and provides a tool to support discussions. Making sure expectations are presented in ‘hopeful and positive ways’ means children and young people will attempt to meet these expectations rather than rebel against them.⁷³

While this paper focuses on ways to prevent police call-outs to residential services, at times it will be necessary to call the police to a residential care service. In these circumstances communication helps to prevent the situation escalating once the police have arrived. When asked about what staff should do when police are called to a residential care service, young people told CREATE staff should inform and prepare *all* children in the residential care service to enable them to cope with the situation.⁷⁴ Clear, simple and consistent policies and procedures and other child-focused educative material can support these types of discussions with children.

It is also important that children exposed to the police and the criminal justice system are provided with information on what to expect and given appropriate legal support. For example, Queensland Office of the Public Guardian’s Child Advocates – Legal Officers (child advocates) are lawyers who are able to protect the rights of children in the child protection system and ensure their voice is heard.⁷⁵ Child advocates are able to provide services to children who are subject to child protection orders which includes providing information and advice about legal issues, or providing support in court conferences.

Data limitations

Capturing and reporting on data is a critical part of building an understanding of the effect calling the police to residential care services has on the police, residential care services, and the staff and children living there. Data also supports internal management and reflection for a continuous improvement approach to service delivery.

Improved data capturing, from multiple agency perspectives, would support the development of strengthened policies and processes for residential care and improve the ability to report on the prevalence of police call-outs to residential care services in Queensland. Improving the way data is captured to better understand the frequency of police involvement may require financial and resource investment from relevant agencies.

Project EURECA—a working example

Following an increase in police call-outs to residential care services in 2014, a partnership of local level representatives from agencies and residential care services established an initiative to address the issues contributing to increased police call-outs.

‘Project EURECA’ (Encouraging a United Response to the Education and Care of Adolescents) identified the majority of police call-outs occurring within the region were related to the behaviours of young people rather than criminal activity. To respond to the identified issues, representatives from multiple service delivery agencies in the local area committed their on going participation in a multi-disciplinary, case-focused response. This included a commitment from the local Child Safety Service Centre and police station.

Child Protection Investigation Unit officers (part of the QPS) were assigned to liaise with each residential care service in the region. This aimed to establish partnerships between police and residential services to allow for a multi-disciplinary discussion regarding strategies to better support children and young people in situations that did not require a criminal justice response. Residential care staff were encouraged to discuss procedural issues and queries about incidents in residential care services directly with police, in an informative rather than punitive way.

This local initiative achieved a number of benefits for children and residential care services operating in the area:



Figure 2: Outcomes of Project EURECA

Representatives from each residential care service and relevant agencies continue to meet collaboratively to discuss the support needs of children living in residential care in their local area. The ongoing commitment to a cross-agency approach has been key to the success of this initiative.

Conclusion

The concerns raised by children living in out-of-home care about their experiences of being criminalised, and exposure to the criminal justice system have ignited cross-agency attention to the issues.

While research and findings vary in relation to the extent to which children living in out-of-home care are over represented in both cases, it provides a broad understanding of the related issues.

The QFCC acknowledges the complex needs of children living in out-of-home care, resulting often from traumatic abuse or neglect that may have instigated their placement in child protection in the first place. The impact of these experiences may manifest in their inability to regulate behaviours and difficulties with interpersonal skills. These children can rightfully expect to be cared for within a trauma-responsive system that does not unnecessarily criminalise behaviours that would not be treated as criminal in a family home.

The QFCC, with government and non-government sector partners is committed to improving outcomes for children in residential care by reducing the preventable involvement of police in supporting children. The *Joint agency protocol to reduce preventable police call-outs to residential care services* has been developed to identify shared principles, roles and responsibilities, and strategies for those involved in the provision of care to children living in residential services. It has been designed to complement existing strategies, such as the Hope and Healing Framework and the Human Services Quality Framework.

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